



## EXPRESS MAIL CERTIFICATE

3/26/03 294037475-US Date Label No.

I hereby certify that, on the date indicated above, this paper or fee was deposited with the U.S. Postal Service & that it was addressed for delivery to the Assistant Commissioner for Patents, Washington, DC 20231, by "Express Mail Post Office to Addressee" service.

3/26/03 Name

PLEASE CHARGE ANY DEFICIENCY UP TO \$300.00 OR CREDIT ANY EXCESS IN THE FEES DUE WITH THIS DOCUMENT TO OUR DEPOSIT ACCOUNT NO. 04-0100

Customer No.:



07278

PATENT TRADEMARK OFFICE

Docket No.: 3191/08419

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Roland SEEBACHER, Helmut MÜLLER, Dieter OTTO, Steven OLSEN

Serial No.: 08/135,059

Art Unit: 3622

Filed: October 12, 1993

Examiner: Saul J. RODRIGUEZ

For: POWER TRANSMITTING APPARATUS WITH FLUID COUPLING

REQUEST TO WITHDRAW HOLDING OF ABANDONMENT**RECEIVED**Assistant Commissioner for Patents  
Washington, DC 20231

MAR 31 2003

Sir:

**GROUP 3600**

The reason for this present Request To Withdraw Holding of Abandonment is that the Applicants' previous submission, entitled "Petition Under 37 C.F.R. § 1.136(a)" (copy enclosed in Exhibit A), was never acted upon by the U.S. Patent and Trademark Office (USPTO) despite being properly sent and received by the USPTO.

The Applicants in the above-identified patent application received a NOTICE OF IMPROPER CPA FILING UNDER 37 C.F.R. § 1.53(d), dated July 21, 1998, (copy

enclosed as part of Exhibit A) advising that the request for a CPA was not filed before the abandonment, or the termination of the proceedings, of the application on May 29, 1998.

A review of our file for the above-identified application and of the Darby & Darby docketing system indicates that the Applicants submitted a Petition Under 37 C.F.R. § 1.136(a) by facsimile on September 23, 1998 which addressed and requested withdrawal of the holding of abandonment and reinstatement of the application since it was Applicants position that the request for a continuing application was properly and timely sent to the USPTO.

In support of Applicants' diligent response to the Notice of Abandonment, Applicants enclose a Declaration, signed by a secretary, Ms. Ema Gualano, detailing the procedure followed by the secretaries in the handling of facsimile transmissions to the Patent Office. This Declaration and its supporting documents indicate that the Petition to withdraw the holding of abandonment was in fact filed and received by the USPTO on September 23, 1998.

Applicants received no communication from the USPTO as to this filed Petition and therefore, a Status Request was filed on May 10, 2002 (a copy of which is enclosed as Exhibit C).

On June 10, 2002, my colleague Walter Kupper personally visited the Petitions Office at the USPTO to inquire into the status of the petition and was told that there was no record of the petition in the USPTO's computer system. Further, despite repeated requests for access to the file at the USPTO during this visit and subsequent days, the USPTO continued to state that the file could not be found.

It is respectfully requested that the Petition Under 37 C.F.R. § 1.136(a) dated September 23, 1998, be considered and acted upon on the merits and the above-identified application or the CPA request dated May 11, 1998, be reinstated. Applicants respectfully request that they have been diligent in seeking withdrawal of the notice of abandonment since becoming aware of such fact.

It is believed that no additional fee is due because the Petition Under 37 C.F.R. § 1.136(a) dated September 23, 1998, and the Request for a Continuing Application dated May 11, 1998, were timely submitted, and due to no fault by the Applicants, the petition and the request were not delivered to the Examiner as of this date. As the Applicants responded timely, no fee is due with the present submission as this is merely a copy of what has previously been submitted. If for some reason, the USPTO believes that fees or charges are due in connection with the above-identified matter, authorization is hereby given to charge our Deposit Account No. 04-0100.

Respectfully submitted,

Edward J. Ellis  
Reg. No. 40,389  
Attorney for Applicants

Dated: March 26, 2003

DARBY & DARBY P.C.  
805 Third Avenue  
New York, New York 10022  
212-527-7700

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3/26/03

CV294037475-US

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*Darby & Darby*  
Name (Print)

*Seek*  
Signature

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Customer No.:



07278

PATENT TRADEMARK OFFICE

Docket No.: 3191/08419



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Roland SEEBACHER, Helmut MÜLLER, Dieter OTTO, Steven OLSEN

Serial No: 08/135,059

Group Art Unit: 3502

Filed: October 12, 1993

Examiner: Saul J. RODRIGUEZ

For: POWER TRANSMITTING APPARATUS WITH FLUID COUPLING

DECLARATION OF EMA GUALANO

Assistant Commissioner for Patents  
Washington, DC 20231

Sir:

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**GROUP 3600**

I, Ema Gualano, declare as follows:

1. I am employed as a secretary at Darby & Darby, P.C. I make this declaration in support of the accompanying REQUEST TO WITHDRAW HOLDING OF ABANDONMENT.

2. A true copy of a Petition Under 37 C.F.R. § 1.136(a) and the accompanying Telecopier Transmission Cover Sheet that was filed with the USPTO are attached as Exhibit A. Exhibit A includes an executed Certificate of Facsimile

Transmission dated September 23, 1998, which includes my signature. The Telecopier Transmission Cover Sheet states that there are 18 pages being transmitted to the USPTO.

3. In accordance with our office procedure for facsimile transmissions, I would have reviewed the papers being transmitted to the U.S. Patent and Trademark Office ("USPTO") for completeness and, if satisfied, would have signed and dated the Certificate of Facsimile Transmission. I would then have faxed the papers to the USPTO. Incomplete or unsigned papers would not be faxed, but would be returned to the attorney.

4. A true copy of the Facsimile Transmission Report is attached as Exhibit B. Exhibit B confirms that the facsimile transmission of all 18 pages of the Petition Under 37 C.F.R. § 1.136(a) and the Telecopier Transmission Cover Sheet (Exhibit A) was completed successfully and received at the Group 3500 facsimile machine at the USPTO on September 23, 1998.

5. Based upon the presence of the Certificate of Facsimile Transmission I signed and the Facsimile Transmission Report, it may be concluded that the original Petition and accompanying papers of Exhibit A were timely filed on September 23, 1998, in accordance with normal procedures at Darby & Darby.

All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further these statements were made with the knowledge that willful and false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: March 26, 2003



Ema Gualano

Darby & Darby, P.C.  
805 Third Avenue  
New York, NY 10022  
(212) 527-7700

DARBY & DARBY P.C.  
805 Third Avenue  
New York, NY 10022  
Tel. - 212-527-7700  
Fax - 212-753-6237



Date: September 23, 1998

Attorney Docket No.: 2338/08419

**TELECOPIER TRANSMISSION COVER SHEET**

Phone Number Transmitting To: 1-703-305-3597

To: **United States Patent and Trademark Office**

Examiner: Mr. Saul J. Rodriguez

Group Art Unit: 3622

Paper(s) Being Transmitted: Six pages of Petition under 37 C.F.R. 1.1.36(a), 1 page of Notice of Improper CPA Filing under 37 C.F.R. 1.53(d), 3 pages of Continuing Application filed on May 11, 1998 and Seven copies of printouts.

Number of Pages Being Transmitted (including cover): 18 pages

**CERTIFICATION OF FACSIMILE TRANSMISSION**

Serial No.: 08/135,059

Filed: 10/12/93

I hereby certify that these papers are being facsimile transferred to the United States Patent and Trademark Office on the date shown below.

Ema Gualano  
Name

September 23, 1998  
Date

  
Signature

**RECEIVED**

MAR 31 2003

**GROUP 3600**

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of  
 Serial No.  
 Filed  
 For  
 Patent Examiner  
 Group Art Unit



Roland SEEBACHER et al.  
 08/135,059  
 10/12/93  
 POWER TRANSMITTING APPARATUS  
 WITH FLUID COUPLING  
 Mr. Saul J. Rodriguez  
 3622

PETITION UNDER 37 C.F.R. §1.136(a)

Hon. Commissioner of Patents  
 and Trademarks  
 Washington, D.C. 20231

Sir:

Your petitioners and their assignee (LuK Lamellen und Kupplungsbau GmbH), by their undersigned attorney, respectfully request that the above-referenced patent application Serial No. 08/135,059 or their CPA request deposited on May 11, 1998 (not on April 21, 1998 as stated in Paper dated July 21, 1998) be reinstated as expeditiously as possible.

The reasons for this petition are as follows:

(1) On February 25, 1998, the undersigned filed a Second Submission Under 37 C.F.R. §1.129(a) in response to the Final Action of May 8, 1997 which, in turn, was in response to the First Submission dated March 27, 1997. Receipt of the Second Submission (stating that

**RECEIVED**

it was filed on March 2, 1998) is acknowledged on page 2 (or page one?) of the Advisory Action (Paper No. 23) dated April 17, 1998. A copy of Paper No. 23 is enclosed.

The undersigned attorney contacted the Patent Examiner Mr. Rodriguez per telephone on April 23 and 24 and on May 1, 1998 in order to ascertain the reasons for the Examiner's refusal to consider the Second Submission, especially in view of the fact that the First Submission has been found to be acceptable and was fully responded to in the Final Action dated March 27, 1997. Mr. Rodriguez explained that, in his opinion, the filing of any Submission was improper, that this matter was discussed with his superiors (Primary Examiner Mr. Bonck and Supervisory Primary Examiner Mr. Marmor), and that his refusal to issue a regular Action in response to the Second Submission was approved by his superiors.

(2) Since a Notice of Appeal was filed on November 10, 1997 (please refer to page one (two?) of Paper No. 23), and since the undersigned attorney desired to avoid any, even remotest, possibility that the present application would become abandoned, a Request for a Continuation Application with all necessary documents was filed on May 11, 1998 (i.e., within six months from the date (November 10, 1997) of the Notice of

Appeal. May 10, 1998 was a Sunday. Receipt of such Request is acknowledged in Paper dated July 21, 1998 a copy of which is enclosed.

(3) The Paper dated July 21, 1998 contains two obvious inaccuracies, namely:

(a) This Paper (hereinafter called Notice) states that the Continued Prosecution Application (CPA) request was deposited on April 21, 1998. Such request was filed by facsimile on May 11, 1998. Enclosed are copies of seven printouts indicating that the telefax machine in Group 3500 did not function properly and was incapable of accepting more than 18 pages in a single pass.

(b) The Notice of July 21, 1998 contains the statement that the prior application (Serial No. 08/135,059 was abandoned, or proceedings terminated on May 29, 1998.

Thus, the Notice acknowledges receipt of the Request for CPA on April 21, 1998 (this should be May 11, 1998), and the same Notice contains the statement that the application was abandoned on May 29, 1998.

(4) Upon receipt of the Notice dated July 21, 1998, the undersigned contacted the Patent Examiner Mr. Rodriguez in an effort to clarify the aforesdiscussed contradictory statements. Mr. Rodriguez informed the

undersigned that the file of the application Serial No. 08/135,059 was no longer in the Group Art Unit 3622 and, therefore, the undersigned should seek information from the official or officials in charge of petitions to revive. The undersigned sought to contact Mr. George Walton whose name appears in the lower left-hand corner of the Notice dated July 21, 1998. Mr. Walton was not available; however, the undersigned was connected with Ms. Sonia Wiliams who, in turn, connected the undersigned with her Supervisor Mrs. Adams. Mrs. Adams informed the undersigned that she cannot discuss the case without the file and that the file could not be located. When the undersigned continued to inquire, he was informed that the file can be located in one day, in one week, in two or three weeks or more than three weeks.

A total of thirteen telephone calls were made to the Patent and Trademark Office in connection with this issue between July 30 and August 12, 1998. No explanation was received to this date. Therefore, the undersigned has decided to file this petition in order to ensure that an explanation can be received in the near future and that the prosecution of this application can proceed to a successful conclusion in the very near future.

Copies of debit notes indicating the telephone numbers of the Patent Examiner Mr. Rodrigues and certain other officials mentioned in this petition, together with the dates of the telephone calls made to such officials are available and can be furnished upon request.

(5) Your petitioners herewith respectfully request the following dispositions:

(A) Reinstatement of the application Serial No. 08/135,059 or of the CPA application at a very early date (emphasis by the undersigned).

(B) Affording a new term for the filing of a Brief on Appeal or of a CPA application if the PTO will decide to reinstate the application Serial No. 08/135,059.

(C) An Action on the merits of the claims which were filed with the CPA application on May 11, 1998 if the PTO will decide to accept the request for the filing of the CPA application.

(D) An extension of the term of the patent to be granted on the application Serial No. 08/135,059 or of the patent to be granted on the CPA application (if and when granted) commensurate with the period of time which will elapse in connection with the reinstatement of Serial No. 08/135,059 or the delayed

filling of the CPA application.

(6) Your petitioners sincerely believe that no fee is due to be paid in connection with the filing of this petition. However, if the PTO is of the opinion that a fee is to be paid in spite of the fact that the application Serial No. 08/135,059 stands abandoned due to certain erroneous conclusions, decisions and/or interpretations by the PTO, applicants herewith respectfully request that such fee or fees be charged to the account No. 04-0100 of DARBY & DARBY, P.C.

A favorable disposition at the earliest possible date is earnestly solicited.

Respectfully submitted,

DARBY & DARBY, P.C.

Dated: 09/21/98

By Peter K. Kontler  
Peter K. Kontler  
Reg. No. 20,384

Encls.



**PAST NAMED APPUCANT**

7

## APPENDIX B

08419

PM31/0721

7/21/98 DARBY & DARBY  
605 THIRD AVENUE  
NEW YORK NY 10022  
FACSIMILE TRANSMISSION  
To: Mr. Kanter  
Fax No. 1941 434 6747  
From: H. Sternberg  
No. of Pages 1

RODRIGUEZ, S

3622

07/31/36

**DATE MAILED:**

**NOTICE OF IMPROPER CPA FILING UNDER 37 CFR 1.53(d)**  
*No Filing Date Granted*

The Continued Prosecution Application (CPA) request deposited on 4/21/88 is improper under 37 CFR 1.53(d) and has not been granted a filing date for reason(s) indicated below:

Any assertions that the above-mentioned CPA request is proper under 37 CFR 1.53(d) must be by way of petition directed to the attention of the Office of Petitions. Any such petition must be accompanied by the \$130.00 petition fee (37 CFR 1.17(i)). If the petition alleges that no defect exists, a request for refund of the petition fee may be included in the petition.

A petition under 37 CFR 1.53(e) as discussed above must be submitted within **TWO MONTHS** of the date of this notice (37 CFR 1.181(f)). **THIS TIME LIMIT MAY NOT BE EXTENDED PURSUANT TO 37 CFR 1.136.** Failure to timely file a petition under 37 CFR 1.53(e) will result in the CPA request being retained in the file of the prior application but treated as never having been filed, in which case applicant may request a refund of the CPA filing fee (if submitted) less the \$130.00 handling fee (37 CFR 1.21(n)).

- 1. The prior application is not a complete (37 CFR 1.51(b)) application or the national stage of a PCT international application that is in compliance with 35 U.S.C. 371.
  - 2. The request for a CPA was not filed before the payment of the issue fee on the prior application. The issue fee was paid on the prior application on \_\_\_\_\_.
  - 3. The request for a CPA was not filed before the abandonment of, or termination of proceedings on, the prior application. The prior application was abandoned, or proceedings terminated on 5-29-98.
  - 4. A petition for an extension of time under 37 CFR 1.136(a) accompanied by the appropriate fee (37 CFR 1.17(a)) are necessary to establish copendency between the prior application and this CPA request.
  - 5. OTHER: \_\_\_\_\_

**A copy of this notice MUST be returned with the reply.**

Direct any questions about this Notice to:

Done well 6.00

SEARCHED ~~SEARCHED~~

FORM PTO-2012 (REV. 2-08)

**PART 1 - ATTORNEY/APPLICANT COPY**

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MAR 3 1 2003  
GROUP 3600

EXPRESS MAIL CERTIFICATE

Date \_\_\_\_\_ Label No. \_\_\_\_\_  
I hereby certify that, on the date indicated above I  
deposited this paper or fee with the U.S. Postal Service  
and that it was addressed for delivery to the Commissioner  
of Patents & Trademarks, Washington, DC 20231 by "Express  
Mail Post Office to Addressee" service.



Name (Print)

Signature

File No.  
2338/08419-US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**In re Application of:** Roland SEEBACHER, Helmut MÜLLER, Dieter OTTO and  
Steven OLSEN  
**For:** POWER TRANSMITTING APPARATUS WITH FLUID COUPLING

CONTINUING APPLICATION

Hon. Commissioner of  
Patents and Trademarks  
Washington, DC 20231

Sir:

This is a request for filing under 37 C.F.R. 1.53(b) of a:

Continuation

Divisional

application of the following pending prior application:

Serial No. 08/135,059      Filed: 10/12/93

Of: Roland SEEBACHER, Helmut MÜLLER, Dieter Otto and Steven OLSEN

For: POWER TRANSMITTING APPARATUS WITH FLUID COUPLING

Examiner: Mr. Saul Rodriguez Group: 3622

1. Enclosed is a copy of the prior application as originally filed (along with a copy of the original Declaration). No amendments identified in the declaration for this prior application introduced new matter. Please use this copy as the application and declaration for the present case.

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MAR 31 2003  
GROUP 3600

2. The filing fee is calculated below:

**CLAIMS AS FILED, AFTER ACCOMPANYING AMENDMENT**

	Claims on File	Number Extra	Rate
<b>Basic Fee</b>			<b>\$ 780.00</b>
<b>Total Claims</b>	68 - 20 = 48	<b>x \$22</b>	<b>\$1056.00</b>
<b>Independent Claims</b>	3 - 3 =	<b>x \$82</b>	<b>\$</b>
<b>If Multiple Dependent Claims Are Present, Add \$270.00</b>			<b>\$</b>
<b>Total Filing Fee</b>			<b>\$1846.00</b>
<b>For Small Entity (half of preceding total)*</b>			<b>\$</b>

\*No. 9 below must be checked to claim this reduction.

3. A check in the amount of \$ is enclosed.

Please charge the amount of \$1846.00 and any other fees payable with this continuation application to the Account No. 04-0100 of  Cancel claims. DARBY & DARBY, P.C.

5.  Amend the specification by inserting before the first line the sentence (check one and fill in):

10/12/93 08/135,059  
"This is a  continuation,  division, of application Serial No./, filed  Each of these prior applications is hereby incorporated herein by reference, in its entirety."

6.  The prior application is assigned to: LuK Lamellen und Kupplungsbau GmbH

7.  A Preliminary Amendment is also enclosed.

8.  Informal Drawings are filed herewith

9.  A verified statement claiming small entity status (check one):

was filed in parent application or

is enclosed.

10.  Priority is claimed from

Country: Federal Republic Germany

Number: P 42 34 304

Date: 10/12/92

The priority document

was filed in the prior application  
 is enclosed.

11. The Assignment

6736 0264

was recorded at Reel / Frame / on 10/12/93  
 is enclosed.

Dated: May 11, 1998

Respectfully submitted,

Peter K. Kontler

Peter K. Kontler  
Reg. No. 20,384  
Attorney for Applicant(s)

(D&D Forms/PTO-2)

I hereby certify that this Request for Continuing Application under 37 C.F.R. 1.53(b), with all enclosures listed therein, has been forwarded by facsimile to Group Art Unit 3502 (facsimile No. 703 305 3597) on May 11, 1998.

Peter K. Kontler

Peter K. Kontler

May 11, 1998

May 11, 1998

In re Application of: Roland SEEBACHER, Helmut MÜLLER, Dieter OTTO and Steven OLSEN  
For: POWER TRANSMITTING APPARATUS WITH FLUID COUPLING

CONTINUING APPLICATION

Hon. Commissioner of  
Patents and Trademarks  
Washington, DC 20231



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GROUP 3600

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In re Application of: Roland SEEBAKER, Helmut MÜLLER, Dieter OTTO and Steven OLSEN  
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**In re Application of: Roland SEEBACHER, Helmut MÜLLER, Dieter OTTO and  
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**For: POWER TRANSMITTING APPARATUS WITH FLUID COUPLING**

## **CONTINUING APPLICATION**

**Hon. Commissioner of  
Patents and Trademarks  
Washington, DC 20231**

Sir:



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**H Continuation** **I Divisional**

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## GROUP 3600

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In re Application of: Roland SEEBAKER, Helmut MÜLLER, Dieter OTTO and Steven OLSEN  
For: POWER TRANSMITTING APPARATUS WITH FLUID COUPLING

**CONTINUING APPLICATION**

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In re Application of: Roland SEEBAKER, Helmut MÜLLER, Dieter OTTO and Steven OLSEN  
For: POWER TRANSMITTING APPARATUS WITH FLUID COUPLING

CONTINUING APPLICATION

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\*\*\* ERROR TX REPORT \*\*\*  
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14-4-2  
+ 14

In re Application of: Roland SEEBACHER, Helmut MÜLLER, Dieter OTTO and Steven OLSEN  
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***** *** ERROR TX REPORT *** *****								

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\*\*\* ERROR TX REPORT \*\*\*  
\*\*\*\*\*

TX FUNCTION WAS NOT COMPLETED

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File No.  
2338/08419-US1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Roland SEEBACHER, Helmut MÜLLER, Dieter OTTO and  
Steven OLSEN  
For: POWER TRANSMITTING APPARATUS WITH FLUID COUPLING

**CONTINUING APPLICATION**

Hon. Commissioner of  
Patents and Trademarks  
Washington, DC 20231

Sir:

This is a request for filing under 37 C.F.R. 1.53(b) of a:

Continuation

Divisional

application of the following pending prior application:

Serial No. 08/135,059 Filed: 10/12/93

Of: Roland SEEBACHER, Helmut MÜLLER, Dieter Otto and Steven OLSEN

Customer No.:



07278

PATENT TRADEMARK OFFICE

cket No.:3191/08419

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Roland Seebacher et al.

Serial No.08/135,059

Art Unit: 3502

Filed: October 12, 1993

Examiner: A. Pitts

For: **POWER TRANSMITTING APPARATUS WITH FLUID COUPLING**

STATUS REQUEST

Hon. Commissioner of  
Patents and Trademarks  
Washington, DC 20231  
Box Petition

Sir:

EXPRESS MAIL CERTIFICATE

5/10/02 20020720489-US

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DB Peck

Name (Print)

DB Peck

Signature

To date, we have received no communication or official action from the  
United States Patent and Trademark Office in connection with a Petition filed on  
September 23, 1998 by telefax (copy enclosed) in the above-identified patent  
application. Please let us know the current status of the case.

Respectfully submitted,

Henry Sternberg  
Registration No. 22,408  
Attorney for Applicant(s)

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